

OFFICIAL

PATENT

Docket No. 56963US002

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**RECEIVED
CENTRAL FAX CENTER****MAR 25 2004**

Applicant(s): Cary A. KIPKE et al.) Group Art Unit: 1743
Serial No.: 10/020,522) Examiner: Arlen Soderquist
Confirmation No.: 9096)
Filed: December 14, 2001)
For: DESICCATOR SYSTEM HAVING MODULAR ELEMENTS

AMENDMENT AND RESPONSE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The Office Action dated October 27, 2003 has been received and reviewed. Claims 1-58 remain pending with no amendments presented in this response. Reconsideration and withdrawal of the rejections are respectfully requested.

The 35 U.S.C. §112, Second Paragraph, Rejection

The Examiner rejected claims 1-58 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Applicants respectfully submit that the asserted basis for this § 112 rejection does not meet the requirements for such a rejection. "The test for definiteness under 35 U.S.C. 112, second paragraph is whether 'those skilled in the art would understand what is claimed when the claim is read in light of the specification.'" MPEP § 1273.02, p. 2100-199 (Rev. 1, Feb. 2003). No reasoning has been provided as to why one of ordinary skill in the art would not understand the claimed invention. The various volumes and their respective relationships are defined in the

Amendment and Response

Serial No.: 10/020,522

Confirmation No.: 9096

Filed: December 14, 2001

For: DESICCATOR SYSTEM HAVING MODULAR ELEMENTS

Page 2 of 6

claims and examples of some embodiments of the invention are described in the specification at, e.g., p. 8, line 11 to p. 9, line 15 (describing Figure 5).

The assertion that "it is not clear if there is any structural definition that corresponds to the respective volumes" alone does not provide any reasoning as to why one of ordinary skill in the art would not understand the claimed invention. In the absence of legally sufficient reasoning as to why one of ordinary skill in the art would not understand the claimed invention, Applicants submit that this rejection does not meet the requirements of 35 U.S.C. § 112, second paragraph.

For the above reasons, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1-58 under 35 U.S.C. § 112, second paragraph.

The 35 U.S.C. § 102 Rejection

Claims 1-4, 14-18 and 28-29 were rejected under 35 U.S.C. §102(b) as being anticipated by Baker (U.S. Patent No. 5,716,584).

Applicants respectfully submit that this rejection does not meet the requirements for a proper anticipation rejection. The text provided in support of the rejection is largely a paraphrasing of the "Summary of the Invention" of Baker. No discussion whatsoever is provided as to how or where Baker teaches each and every element of claims 1-4, 14-18, and 28-29. In the absence of any guidance as to how the Examiner is applying Baker to the rejected claims, Applicants cannot address the rejection in any meaningful manner.

Reconsideration and withdrawal of the rejection are, therefore, respectfully requested. In the alternative, Applicants respectfully request an opportunity to address a reasoned anticipation rejection in a nonfinal Office Action.

Amendment and Response

Serial No.: 10/020,522

Confirmation No.: 9096

Filed: December 14, 2001

For: DESICCATOR SYSTEM HAVING MODULAR ELEMENTS

Page 3 of 6

The 35 U.S.C. § 103 Rejections

Claims 7-10, 21-24, 30-33, and 35 were rejected under 35 U.S.C. §103(a) as being unpatentable over Baker as applied to claims 1 and 14. Applicants respectfully traverse this rejection and the assertions made in support thereof.

First, as noted above, Baker was not applied to either of claims 1 or 14 above in any manner that would provide a basis for Applicants to address in any response. For that reason alone, Applicants submit that a proper *prima facie* case of obviousness has not been established with respect to claims 7-10, 21-24, 30-33, and 35. In the interest of advancing prosecution of this application, however, Applicants will, to the extent possible, address this rejection.

It is admitted in the Office Action that "Baker does not teach the relative positioning of gas inlets and gas vents, the use of a plurality of inlets and vents or a plurality of modules." The only reasoning provided in support of the rejection is that reversal, rearrangement, and duplication of parts are "within the skill of the routineer in the art."

Applicants respectfully submit that the rejection as stated does not meet the requirements of a *prima facie* case of obviousness. Those requirements include the identification of some motivation or suggestion as to the desirability of making the proposed modifications to meet the claimed invention. The proffered rejection does not, however, identify any suggestion or motivation to make the modifications necessary to reach the claimed invention. In addition, the rejection fails to identify where or how the cited documents teach or suggest the features recited in the rejected claims.

Because this rejection does not meet the requirements for a proper case of *prima facie* obviousness, Applicants request reconsideration and withdrawal of the rejection. In the alternative, Applicants request an opportunity to address this rejection in a nonfinal Office Action if a proper *prima facie* case of obviousness is established.

Amendment and Response

Page 4 of 6

Serial No.: 10/020,522

Confirmation No.: 9096

Filed: December 14, 2001

For: DESICCATOR SYSTEM HAVING MODULAR ELEMENTS

Claims 11-13, 25-27 and 34 were rejected as being unpatentable over Baker as applied to claims 1, 14 and 32, and further in view of Mohan (U.S. Patent No. 5,888,830). Applicants respectfully traverse this rejection and the assertions made in support thereof.

Applicants note that Baker alone was not applied to claim 32. Furthermore, Baker was not applied to either of claims 1 or 14 above in any manner that would provide a basis for Applicants to address in any response. In view of the above, Applicants submit that a proper *prima facie* case of obviousness has not been established with respect to claims 11-13, 25-27, and 34.

As a result, Applicants respectfully request reconsideration and withdrawal of this rejection. In the alternative, Applicants request an opportunity to address this rejection in a nonfinal Office Action if a proper *prima facie* case of obviousness is established.

Claims 1-58 were rejected as being unpatentable over Friswell (U.S. Patent No. 5,100,623) in view of Ball (U.S. Patent No. 5,679,580) and Mohan. Applicants respectfully traverse this rejection and the assertions made in support thereof.

Friswell teaches that a vortexing action can be obtained in the gas above a fluid sample by introducing a gas into the vessel 16 using a nozzle 22. The introduced fluid is asserted to form a vortex above a fluid sample and exit vessel 16 through the center at the top (see, e.g., FIG. 2) after removing at least some liquid from the fluid sample 34 in the vessel 16.

In contrast, Ball et al. teaches a radically different system/method in which a fluid sample is flowed into a receptacle 10 through an inlet 36 and is entrained and atomized in the air or other gas entering the receptacle 10 through slit 14. In other words, there is no sample volume above which a vortex is created as in Friswell.

In view of the radical differences in basic operational principles between Friswell and Ball, Applicants submit that the rejection does not meet the requirements for *prima facie* obviousness because, among other reasons, the proposed modification of Friswell would change its principle of operation from evaporation by a vortex of drying gas to evaporation by

Amendment and Response

Page 5 of 6

Serial No.: 10/020,522

Confirmation No.: 9096

Filed: December 14, 2001

For: DESICCATOR SYSTEM HAVING MODULAR ELEMENTS

entrainment and atomization of the liquid sample. "If the proposed modification or combination of the prior art would change the principle of operation of the prior art being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious." MPEP '2143.02, p. 2110-127 (Rev. 1, Feb. 2003).

Furthermore, the asserted motivations to modify the teachings of Friswell by those of Ball are also not supported by the references. For example, the assertion that it would have been obvious to make the proposed modifications "because of the similarity in the method of operation" is not supported by the references themselves. As discussed above, Friswell and Ball teach radically different approaches to sample drying (i.e., vortexing above the sample versus actually entraining and atomizing the sample in a gas flow). In other words, Friswell and Ball do not have a "similarity in the method of operation" as asserted.

The other motivation relied on in support of the proposed combination of Friswell and Ball, i.e., "to obtain rapid evaporation taught by Ball" is also not supported by the references. Ball provides for rapid evaporation because of entrainment and atomization of the sample material (as discussed in numerous "important objects" of the invention by Ball). In contrast, Friswell requires monitoring of the sample level within a container to determine when sufficient drying has occurred, i.e., the sample material is not entrained and atomized in a helical gas flow, but is, instead, located at the bottom of the vessel. As a result, the asserted motivation to combine based on "rapid evaporation" would require entrainment and atomization. That, however, would lead to a change in the principle of operation of Friswell which, as discussed above, is not proper in the context of a *prima facie* case of obviousness.

The teachings of Mohan are not asserted to, nor do they, address any of the deficiencies in the *prima facie* case of obviousness based on the proposed combination of Friswell and Ball.

Finally, the rejection of all of claims 1-58 is not accompanied by any discussion of many features recited in the fifty-eight claims subject to this rejection. The failure of this rejection to address the many different features recited in the fifty-eight claims and how each of those features is found in or suggested by the cited references prevents the rejection from reaching the

Amendment and Response

Page 6 of 6

Serial No.: 10/020,522

Confirmation No.: 9096

Filed: December 14, 2001

For: DESICCATOR SYSTEM HAVING MODULAR ELEMENTS

status of a proper *prima facie* case of obviousness. Mere paraphrasing of the disclosures of the different references does not provide a proper legal basis for a *prima facie* case of obviousness.

In view of the above, Applicants respectfully submit that the rejection of claims 1-58 under 35 U.S.C. ' 103 does not meet the requirements for a *prima facie* case of obviousness. Reconsideration and withdrawal of this rejection are, therefore, respectfully requested.

Summary

It is respectfully submitted that the pending claims 1-58 are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicants' Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted for

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25 MARCH 2004
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By: KWR
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KWR/rgg**CERTIFICATE UNDER 37 CFR §1.8:**

The undersigned hereby certifies that the Transmittal Letter and the paper(s), as described hereinabove, are being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Assistant Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 25th day of March, 2004, at 11:51 a.m. (Central Time).

By: Rachel Engliardi-Graham Name: Rachel Engliardi - Graham